

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Community Television, Inc.	)	
	)	CSR-5853-M
v.	)	
	)	
EchoStar Communications Corporation	)	
	)	
Request for Mandatory Carriage of	)	
Television Station WATC-TV,	)	
Atlanta, Georgia	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 27, 2002**

**Released: July 3, 2002**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. Community Television, Inc. (“CTI”) licensee of noncommercial, educational station WATC-TV, Channel 57, Atlanta, Georgia (“WATC” or the “Station”) filed the above-captioned must carry complaint against EchoStar Communications Corporation (“EchoStar”), pursuant to Section 338 of the Communications Act, as amended (the “Act”), and Section 76.66 of the Commission’s rules, for its refusal to carry the signal of WATC on its satellite system.<sup>1</sup> WATC states that EchoStar is providing “local-into-local” satellite service pursuant to the statutory copyright license in Atlanta, the designated market area (“DMA”) where station WATC operates.<sup>2</sup> In its complaint, WATC alleges that EchoStar has failed to meet its must carry obligations under the Commission’s satellite broadcast signal carriage rules.<sup>3</sup>

<sup>1</sup> 47 U.S.C. § 338; 47 C.F.R. § 76.66. On December 7, 2001, the U.S. Court of Appeals for the Fourth Circuit unanimously upheld the constitutionality of Section 338 of the Act, and Section 76.66 of the Commission’s rules. *See SBCA v. FCC*, 275 F.3d 337, 350 (4<sup>th</sup> Cir. 2002), *cert. denied*, 70 U.S.L.W. 3580 (U.S. June 17, 2002) (No. 01-1332).

<sup>2</sup> *See* 17 U.S.C. § 122(a); 47 U.S.C. § 339. A satellite provider provides “local-into-local” satellite service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6).

<sup>3</sup> Under Section 76.66(m)(3) of the Commission’s rules, a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with its must carry obligations may obtain review of such denial or response by filing a “complaint” with the Commission in accordance with Section 76.7. *See* 47 C.F.R. § 76.66(m)(3). Although styled a “complaint,” a carriage complaint filed against a satellite carrier is treated by the Commission as a petition for special relief for purposes of the Commission’s pleading requirements. *See 1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999). Responsive pleadings filed in this context, therefore, must comply with the requirements set forth in Section

(continued...)

WATC requests that the Commission order EchoStar to carry the station's signal on EchoStar's main satellite system. EchoStar filed an opposition ("Opposition"), to which CTI replied. For the reasons discussed below, we grant WATC's complaint and order carriage within 75 days of WATC's delivering a good quality signal to EchoStar's local receive facility ("LRF").

## II. LEGAL BACKGROUND

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"),<sup>4</sup> requires satellite carriers, beginning January 1, 2002, to carry on request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.<sup>5</sup> For the initial election cycle, broadcast stations were required to notify satellite carriers by July 1, 2001, of their mandatory carriage election for carriage to commence by January 1, 2002.<sup>6</sup> A station's market for satellite carriage purposes is its DMA, as defined by Nielsen Media Research.<sup>7</sup> In November 2000, the Commission adopted rules to implement the provisions contained in Section 338.<sup>8</sup>

3. Under the Commission's broadcast signal carriage rules, each satellite carrier providing local-into-local service pursuant to the statutory copyright license is generally obligated to carry any qualified local television station in the particular DMA that made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA.<sup>9</sup> Furthermore, under the SHVIA, a television station asserting its right to carriage is required to bear the costs associated with delivering a good quality signal to the designated LRF of the satellite carrier.<sup>10</sup> To be considered a good quality signal for satellite carriage purposes, a television station must deliver to the local receive facility of a satellite carrier either a signal level of -45dBm for

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76.7(b)(1).

<sup>4</sup> See Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

<sup>5</sup> See 47 U.S.C. § 338.

<sup>6</sup> See 47 C.F.R. § 76.66(c)(5), which states that a noncommercial television station must request carriage by July 1, 2001 for the first election cycle.

<sup>7</sup> A DMA is a geographic area that describes each television market exclusive of others, based on measured viewing patterns. See 17 U.S.C. § 122(j)(2)(A)-(C); see also *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, 1934 (2000) ("DBS Must Carry Report & Order"); 47 C.F.R. § 76.66(e) ("A local market in the case of both commercial and noncommercial television broadcast stations is the designated market area in which a station is located, and (i) [i]n the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) [i]n the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.").

<sup>8</sup> See generally *DBS Must Carry Report & Order*, 16 FCC Rcd 1918. The Commission later affirmed and clarified its carriage rules. See *Implementation of the Satellite Home Viewer Improvement Act of 1999; Broadcast Signal Carriage Issues*, 16 FCC Rcd 16544 (2001) ("DBS Must Carry Reconsideration Order").

<sup>9</sup> See 47 C.F.R. § 76.66.

<sup>10</sup> See 47 C.F.R. § 76.66(g)(1).

UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment.<sup>11</sup>

### III. DISCUSSION

4. In support of its Complaint, WATC states that it is a full-power, noncommercial, educational television station that it is licensed to Atlanta, Georgia, which is in the Atlanta DMA.<sup>12</sup> WATC indicates that it sent a must carry election letter to EchoStar prior to July 1, 2001.<sup>13</sup> In response, EchoStar denied the Station's must carry request for "failure to prove signal meets legal standard of quality necessary for mandatory carriage" and "failure to provide community of license."<sup>14</sup> WATC asserts that on September 10, 2001, EchoStar and the Station jointly performed a signal strength test indicating that WATC met the signal strength standards for carriage.<sup>15</sup> Shortly thereafter, WATC received correspondence from EchoStar that rescinded the denial of carriage based on failure to prove signal quality, subject to the condition that no other grounds for rejection arise, but indicated that the "failure to provide community of license" basis for rejection was still pending.<sup>16</sup> WATC filed a must carry complaint with the Commission on September 26, 2001.<sup>17</sup> On October 8, 2001, EchoStar notified WATC that the Station's signal was "acceptable off-air," that the carrier "accepted WATC's election for carriage," and that "all ... bases for rejection have been withdrawn."<sup>18</sup> As a result, WATC withdrew its must carry complaint.<sup>19</sup>

5. WATC states that on December 28, 2001, it received a letter from EchoStar asserting that the Station did not deliver a good quality signal to EchoStar's LRF and that the carrier would not launch WATC on January 1, 2002.<sup>20</sup> EchoStar's letter indicated that it would commence carriage of WATC within 60 days from delivery of a good quality signal.<sup>21</sup> WATC asserts that it informed EchoStar that, due to technical problems with its transmitter, the Station had operated at low power for a few days.<sup>22</sup> WATC requested that EchoStar expeditiously commence carriage of the Station.<sup>23</sup> In late January, EchoStar sent a letter to WATC stating that the carrier had performed new signal tests indicating that the Station continued to have "unacceptable picture quality and marginal signal strength."<sup>24</sup>

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<sup>11</sup> 47 C.F.R. § 76.66(g)(2). See *DBS Must Carry Reconsideration Order*, 16 FCC Rcd at 16559-61.

<sup>12</sup> Complaint at 1.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at Exhibit 1.

<sup>18</sup> *Id.* at Exhibit 2. EchoStar reconfirmed that it would commence mandatory carriage of WATC on January 1, 2002, in a letter dated October 18, 2001. *Id.* at Exhibit 1.

<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.* at 5, Exhibit 3.

<sup>21</sup> *Id.* at Exhibit 3.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 6, Exhibit 5.

6. WATC contends that EchoStar's test results cannot form a basis for denying the Station's carriage since signal strength, not picture quality, is the benchmark that determines mandatory carriage rights under the Commission's rules.<sup>25</sup> Furthermore, WATC states that it was not present for EchoStar's January test and disputes the results.<sup>26</sup> WATC notes that EchoStar characterizes the Station's signal as "marginal," which WATC believes is a tacit acknowledgement that it meets the applicable -45 dBm standard for UHF signal strength.<sup>27</sup> WATC asserts that it is confident that it does provide a good quality signal to EchoStar since the carrier's LRF is within WATC's city grade contour.<sup>28</sup> Nonetheless, WATC affirms that if, for any reason, the signal of WATC does not meet the Commission's requirements, the Station will provide EchoStar's LRF with a good quality signal at its own expense.<sup>29</sup> WATC did not conduct or attempt to conduct signal tests at the LRF to demonstrate its signal strength or quality. WATC asks that the Commission impose sanctions against EchoStar for willful non-compliance with its must carry obligations.<sup>30</sup>

7. In its Opposition, EchoStar asserts that it was justified in denying WATC carriage on January 1, 2002, since the Station conceded that it did not provide a good quality signal as of that date.<sup>31</sup> EchoStar further states that its continued denial of carriage, which is based upon the results of its late January 2002 signal test, is justified absent further action by WATC to improve its signal strength and quality.<sup>32</sup> EchoStar contends that the requirement to provide a good quality signal is an ongoing burden applicable to stations under the Commission's must carry standards.<sup>33</sup> In support, EchoStar cites Commission precedent in the cable context which found that:

[A] station seeking must carry status must not only qualify to obtain it, but must also maintain such status ... throughout the duration of the election period. One of the factors that a station seeking mandatory carriage rights on a cable system must meet is that it must deliver a good quality signal to the cable operator's principal headend.<sup>34</sup>

EchoStar affirms that it will commence carriage of WATC once the Station provides a good quality signal to EchoStar's LRF.<sup>35</sup> However, EchoStar indicates that such carriage will be on a wing satellite separate from its main satellite system.<sup>36</sup> EchoStar contends that it is working to comply with the Commission's

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<sup>25</sup> *Id.* at 10.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* WATC broadcasts on channel 57, which is a UHF signal.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at n.32.

<sup>30</sup> *Id.* at 10-14.

<sup>31</sup> Opposition at 2.

<sup>32</sup> *Id.* at 3-4.

<sup>33</sup> *Id.* at 5-6.

<sup>34</sup> *Christian Faith Broadcast, Inc.*, 15 FCC Rcd 9513, 9515-16 (2000).

<sup>35</sup> Opposition at 7.

<sup>36</sup> *Id.*

must carry rules and no sanctions are necessary or warranted.<sup>37</sup>

8. In reply, WATC reiterates its earlier arguments and characterizes EchoStar's offer to carry WATC on a wing satellite as without merit in light of the Commission's recent *Declaratory Ruling and Order*.<sup>38</sup> The Station suggests that EchoStar never intended to carry its signal and criticizes the testing procedures used by EchoStar in its January signal test as unreliable and contrary to the Commission's standards.<sup>39</sup>

9. As a threshold matter, we find that WATC was not required to be carried by EchoStar on January 1, 2002, in light of the Station's admitted failure to provide a good quality signal on that date. In order to maintain must carry status, television stations must, *inter alia*, continue to provide a good quality signal throughout the relevant election cycle. To the extent that stations experience temporary technical difficulties and communicate such problems to satellite carriers along with a service restoration plan, we anticipate that satellite carriers will work with stations to ensure continued carriage. We do not believe that temporary operating infirmities should excuse the continual carriage of an otherwise qualified station. However, although WATC states that it experienced a temporary transmitter problem that lasted "a few days," the Station did not inform EchoStar of this difficulty even though the Station was aware of the imminent January 1, 2002, carriage deadline. Furthermore, WATC has not demonstrated that its technical difficulties were intermittent in nature.

10. WATC states that it has restored its service to full power, a fact that EchoStar disputes. In the *DBS Must Carry Reconsideration Order*, we found that in disputes over signal quality, "the broadcast station should pay the cost of signal tests if necessary to prove that the signal is of good quality."<sup>40</sup> EchoStar has a reasonable basis to question WATC's signal quality based on the Station's admission of signal problems, as well as EchoStar's test. As a result, WATC is responsible for any costs associated with demonstrating that it now provides a good quality signal to EchoStar's LRF. WATC has also committed to providing, at its own cost, a good quality signal to the LRF via specialized equipment or alternative means, if necessary.<sup>41</sup> Based upon this commitment, we find that WATC is entitled to carriage on EchoStar's satellite system in accordance with our *Declaratory Ruling and Order*<sup>42</sup> within 75 days of delivering a good quality signal to EchoStar's LRF. We reiterate that WATC is responsible for proving that it is providing a good quality signal over the air, or arranging delivery of a good quality signal by other means. Until WATC does so, it is not entitled to mandatory carriage. In light of our resolution herein, we find that sanctions against EchoStar are not warranted.

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<sup>37</sup> *Id.* at 7-9.

<sup>38</sup> See *National Association of Broadcasters and Association of Local Television Stations, Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd 6065 (2002) ("*Declaratory Ruling and Order*"); Reply at n.4. Petitions for Reconsideration of the Bureau's *Declaratory Ruling and Order* were filed by the following parties on the following dates: EchoStar (5/6/2002), Hardy, Carey & Chautin, *et al.* (4/17/2002), Brunson Communications, Inc. (5/3/2002) and Maranatha Broadcasting Company, Inc. (5/6/2002). Applications for Review of the *Declaratory Ruling and Order* were filed by the following parties on the following dates: WLNY-TV/Golden Orange Broadcasting Co. (5/3/2002), Association of Public Television Stations (5/6/2002) and Paxson Communications Corp. (5/6/2002).

<sup>39</sup> *Id.* at 6-9.

<sup>40</sup> See *DBS Must Carry Reconsideration Order*, 16 FCC Rcd at 16572.

<sup>41</sup> Complaint at n.32.

<sup>42</sup> See *Declaratory Ruling and Order*, 17 FCC Rcd 6065.

**IV. ORDERING CLAUSES**

11. **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended (47 U.S.C. § 338), and Section 76.66 of the Commission's rules (47 C.F.R. § 76.66), that the must carry complaint filed by Community Television, Inc., licensee of noncommercial station WATC-TV, Atlanta, Georgia, against EchoStar, Inc. **IS GRANTED** to the extent indicated herein.

12. **IT IS FURTHER ORDERED** that EchoStar shall commence carriage of station WATC's signal within 75 days from the date on which WATC provides a good quality signal to EchoStar's local receive facility.

13. This action is taken by the Deputy Chief, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>43</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>43</sup> 47 C.F.R. § 0.283.